UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

SUNBELT RENTALS, INC.,	***)***	
	)	
Plaintiff	***)***	
	)	
v.	***)***	***Docket No. 00-363-P-H***
	)	
DOUGLAS CORBRIDGE d/b/a	***)***	
EAST COAST CONSTRUCTION CO.	***)***	
or D.C. & SONS BUILDERS,	***)***	
	)	
Defendant	***)***	

RECOMMENDED DECISION ON DEFENDANT'S MOTION TO SET ASIDE ENTRY OF DEFAULT

Defendant Douglas Corbridge, proceeding *pro se*, moves to set aside the clerical entry of default against him on January 9, 2001 and to file a late answer to the instant complaint. *See* Motion To Vacate Entry of Default ("Motion") (Docket No. 5); Endorsement to Plaintiff Sunbelt Rentals, Inc.'s Request for Default ("Request for Default") (Docket No. 3).[1] For the reasons discussed below, I recommend that the Motion be granted.[2]

I. Applicable Legal Standard

The instant motion implicates Fed. R. Civ. P. 55(c), pursuant to which "[f]or good cause shown the court may set aside an entry of default[.]" This court has observed: "Unlike the more

[1] I construe the Motion as incorporating a request to file a late responsive pleading inasmuch as Corbridge proffers a late-filed answer therewith. *See* Answer to Complaint ("Answer") (Docket No. 5).

[2] The First Circuit recently observed that "[i]t is not clear whether [a] Rule 55(c) motion to vacate [a] default could be regarded as a [non-dispositive] 'pretrial' motion" of the sort that a United States Magistrate Judge may decide, rather than tendering a recommended decision to an Article III judge. *Conetta v. National Hair Care Ctrs., Inc.*, 236 F.3d 67, 74 (1st Cir. 2001). In an abundance of (*continued on next page*)

stringent standard of 'excusable neglect' applied to a motion for relief from *final* judgments pursuant to Federal Rule of Civil Procedure 60(b), the 'good cause' criterion applied to motions to set aside entries of default is more liberal, setting forth a lower threshold for relief." *Snyder v. Talbot*, 836 F. Supp. 26, 28 (D. Me. 1993) (citations omitted) (emphasis in original). "This lower threshold is justified by the fact that an entry of default is a clerical act, and not a final judgment issued by the Court. It is also in keeping with the philosophy that, if at all possible, actions should be decided on their merits." *Id*. at 28-29 (citations omitted).

The First Circuit has identified several factors relevant to a determination whether such a motion should be granted: "(1) whether the default was willful; (2) whether setting it aside would prejudice the adversary[;] (3) whether a meritorious defense is presented; (4) the nature of the defendant's explanation for the default; (5) the good faith of the parties; (6) the amount of money involved; and (7) the timing of the motion." *McKinnon v. Kwong Wah Rest*., 83 F.3d 498, 503 (1st Cir. 1996).

At bottom, a district court should grant a motion to set aside an entry of default "upon a showing of reasonable justification, while resolving all doubts in favor of the party seeking relief from the entry of default." *Snyder*, 836 F. Supp. at 29 (citation and internal quotation marks omitted).

II. Background

Sunbelt Rentals, Inc. ("Sunbelt") filed the instant complaint on November 14, 2000, serving Corbridge with a summons and copy of the complaint the same day. *See* Complaint (Docket No. 1) at 1; Summons in a Civil Action. Sunbelt alleges that on or about January 21, 2000 and February 7, 2000 it leased three pieces of equipment to Corbridge for use on a North Carolina construction project ? a tractor, a landscape rake and a loader backhoe. Complaint ¶¶ 23-24. Sunbelt asserts that Corbridge

caution, I therefore issue a recommended decision on the instant motion.

never actually used the leased equipment on the project, never made any required lease payments, disappeared from the construction site prior to completion of the project and notified Sunbelt on or about March 14, 2000 that the leased equipment was missing. *Id*. ¶¶ 27-30. Sunbelt alleges that "investigation has revealed that when Corbridge completed his work at the Project, he either sold Sunbelt's leased equipment or transported the stolen equipment to Maine." *Id*. ¶ 33.

Sunbelt further asserts that Corbridge had engaged in a pattern of unlawful and fraudulent conduct, *id*. ¶ 36, including: (i) holding himself out to be the owner and principal of two fictitious construction companies, East Coast Construction Co. and D.C. & Sons Builders, to engage in theft, commit fraud and succeed in misrepresentation, *id*. ¶¶ 37-39, (ii) performing defective work, *id*. ¶¶ 44, 48, (iii) failing to pay for certain goods and materials provided to him in connection with a New Hampshire construction project, *id*. ¶ 45, (iv) failing to pay accrued taxes owed on a mobile home, *id*. ¶ 46, and (v) issuing bad checks, *id*. ¶ 47.

Sunbelt asserts causes of action for violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-68 ("RICO") (Count I), conversion (Count II), breach of contract (Count III), fraudulent misrepresentation (Count IV), breach of the implied covenant of good faith and fair dealing (Count V) and breach of contract (Count VI). *Id*. ¶¶ 5, 49-71. Sunbelt claims damages in an amount exceeding $88,393.39, plus costs and attorney fees. *Id*. at 16.

By letter dated November 16, 2000 Corbridge corresponded directly with Sunbelt's attorney, stating *inter alia*:

> 5. Equipment at all times was utilized by Pat Alston (Alston Contracting Service)
>
> 6. This company (East Coast) never at anytime notified Sunbelt that equipment was missing. This company notified Sunbelt that the crew I hired in North Carolina to do this project (Alston Contracting) was finished with the equipment and Sunbelt could pick up the equipment at Lakeside Park. Alton Contracting was the sub contractor hired by this company.

> 7. In fact, in deed, Mike Flynn, at Sunbelt was the one that told me equipment was missing at Lakeside, and he had the Sheriff's department looking for it. Pat Alston was the only one that utilized this equipment.
>
> 8. I never even saw this equipment.
>
> 9. The equipment arrived after January 25th 2000. Bear in mind, I left North Carolina January 22nd 2000.
>
> ***
>
> 11. My personal pattern of conduct has nothing to do with this case. . . . For this reason, I'm personally suing you for slander, defamation of character, digging in personal files, accusing me of being a thief, accusing me of racketeering etc. . . .
>
> 12. Let's get another thing straight, East Coast Construction and D. C. & Son Builders are legitimate Companies in good standing every where and are fully licensed and insured.
>
> ***
>
> 15. In closing, I would like to say, yes, this Company owes Sunbelt for the time this equipment was leased, and for a few flat tires that they fixed for us. I would be happy to pay them for their timed lease, but nothing else. If we can come to negotiated terms on this lease, let me know.

Letter dated November 16, 2000 from [Douglas Corbridge,] East Coast Construction Company to Douglas W Clapp Attorney ("November 16 Letter"), attached as Exh. A to Opposition to Defendant's Motion To Vacate Entry of Default ("Opposition") (Docket No. 7).[3]

By letter dated November 22, 2000 Gordon P. Katz responded to Corbridge's letter, stating, "If you are interested in resolving your debt to Sunbelt Rentals, please forward your settlement offer to me in writing at the above address." Letter dated November 22, 2000 from Gordon P. Katz to Douglas Corbridge d/b/a East Coast Construction Co., attached to Motion. By letter dated December 11, 2000 Corbridge wrote Katz: "I , [sic] would like to settle this matter. I,m [sic] proposing to pay

[3] Corbridge opened his letter with the salutation, "I thought I have met all of the **pieces of shit** people in the world, but I must admit you take the cake." November 16 Letter at 1 (emphasis in original). He asserted that he was investigating Clapp's past and sending a copy of Clapp's accusations to the Massachusetts Bar Association, adding: "And for your sake, I hope you are squeaky clean." *Id.* at
(*continued on next page*)

50¢ on the dollar for the rental only! Naturally the allegded [sic] theif [sic] has nothing to do with this company. If we are in agreement with this proposal, please send me some figures to compare with our records." Letter dated December 11, 2000 from Mr. D Corbridge to Mr. Katz, attached to Motion.

On January 4, 2001 Sunbelt filed a request for default. Request for Default. By letter dated January 9, 2001 Corbridge sent a letter to this court protesting that action, stating that he had responded to Sunbelt and believed he was in the process of resolving the matter out of court with its attorneys. Letter dated January 9, 2001 from Doug Corbridge to Mr. Brownell ("January 9 Letter") (Docket No. 4).[4] By letter dated January 12, 2001 the clerk's office informed Corbridge that any response to the entry of default needed to be filed in accordance with the Federal Rules of Civil Procedure and the local rules of this court. Letter dated January 12, 2001 from Deborah L. Whitney, Deputy Clerk, to Mr. Douglas Corbridge. The instant motion was filed on February 7, 2001. Motion at 1. In the Motion Corbridge explained:

> I, Douglas Corbridge, did not understand all rules & regulations of this law suit against me & did try on two different occasions to work out a settlement with Sunbelts [sic] attorneys. . . .
>
> I own a very small company, and I am working very hard to avoid being unemployed. If the plaintiff was granted this default, I know it would have a very negitive [sic] impact on me & this company. I,m [sic] just looking for the chance to settle this claim in court in a fair & reasonable manner.
>
> I cannot afford a lawyer at present & went to Pinetree Leagel [sic] Assistance & was told, their attorneys, do not handle commerical [sic] or business disputes. In closing, I,d [sic] like to say, I,m [sic] at the mercy of this court & hope you rule in a favorable way to me.

Motion. In his proferred answer Corbridge further asserted: "I, being owner of East Coast Construction Co, do deny all aligations [sic] against me & this company. These are all false & made

2.

[4] Corbridge also stated that he had copied the court on his earlier correspondence with Sunbelt; however, the court has no record of having received such copies.

up aligations [sic]. The only thing this conpany [sic] owes is rental time on this equipment. I tryed [sic] twice to settle this matter with Sunbelts [sic] attorneys[.]" Answer.

III. Analysis

With this as backdrop I proceed to the seven factors the First Circuit has identified as relevant in the context of a motion to set aside entry of default:

1. **Willfulness of Default; Nature of Explanation for Default**. Corbridge ascribes his default to his lack of knowledge of court procedures, his inability to obtain legal counsel and his belief that the parties were engaged in settlement discussions. *See* January 9 Letter; Motion. Sunbelt asserts that Corbridge held himself out as a sophisticated businessman, had been involved in several previous lawsuits, arguably could have placed a telephone call to the clerk's office to ascertain what was required, and merely sent a threatening letter to its counsel in hopes the lawsuit would "disappear." Opposition at 5.[5] The hostile tone of the November 16 Letter, considered in conjunction with Corbridge's previous experience with the legal system, supports a conclusion that Corbridge's default was willful in the sense that he hoped, either by threat or offer of settlement, to cause the lawsuit to go away.

2. **Prejudice to Adversary**. Sunbelt identifies no prejudice it would suffer were the default to be set aside, and I perceive none. *See Snyder*, 836 F. Supp. at 30 ("[P]rejudice cannot be inferred merely from the passage of time, but, instead, relates to whether 'witnesses have died,'

[5] Sunbelt attaches to its complaint evidence that Corbridge was involved in (i) a New Hampshire small-claims action by North Conway Incinerator Service, Inc. to recover $1,770.80 for services rendered in connection with a demolition job, Exh. E to Complaint; (ii) a New Hampshire small-claims action by Northern Building Supply, Inc. to recover $1,031.89 for goods and services provided on open account, Exh. F to *id.*; (iii) a New Hampshire small-claims action by Faith Grasso to recover $828.19 in back taxes owed on a mobile home, Exh. G to *id.*; and (iv) a civil suit in the New Hampshire Superior Court in which Corbridge sued Harlow Sarles and Tuftonboro Town Hall, apparently to recover monies due on a painting project, and the defendants defended on the ground of Corbridge's assertedly poor-quality work, Exh. H to *id.*

'memories have dimmed beyond refreshment,' a 'discovery scheme has been thwarted,' or 'evidence has been lost' during the time that elapsed from a party's default.").

3. **Existence of Meritorious Defense**. Sunbelt contends that this factor strongly favors its position inasmuch as Corbridge concedes liability. Opposition at 4-5. Sunbelt paints with far too broad a brush. "The 'meritorious defense' component of the test for setting aside a default does not go so far as to require that the movant demonstrate a likelihood of success on the merits." *Coon v. Grenier*, 867 F.2d 73, 77 (1st Cir. 1989). "Rather, a party's averments need only plausibly suggest the existence of facts which, if proven at trial, would constitute a cognizable defense."). *Id*. Corbridge's letters and pleadings, fairly read, do not concede liability to any specific amount of rental due – certainly not to the figure of $88,393.39 mentioned in the Complaint.[6] Indeed, Corbridge states that he informed Sunbelt that the equipment was ready to be picked up and that he had nothing to do with its subsequent disappearance. *See* November 16 Letter. He embraces liability for what he describes as the "timed lease," presumably meaning through the time that (per his version of events) he notified Sunbelt that the equipment was ready for pickup. *See id*. at 2. Further, Corbridge flatly denies having absconded with Sunbelt's equipment or maintaining fictitious companies for the purpose of fleecing innocent victims – key predicates for Sunbelt's RICO claim. *See id*.; Answer; Complaint ¶¶ 52-53. This is hardly an insignificant denial given that RICO liability subjects a defendant to treble damages. *See, e.g., Bonilla v. Volvo Car Corp*., 150 F.3d 88, 92 (1st Cir. 1998) ("RICO provides that an injured party may recover treble damages and the cost of the suit, including a reasonable

[6] I note that, in a pending motion for assessment of damages filed in connection with a motion for default judgment, Sunbelt reports that the missing equipment was located in North Carolina on or about January 5, 2001. Motion for Assessment of Damages (Docket No. 10) at 8 & n.2. Sunbelt states that the police are continuing to investigate the circumstances of the equipment's disappearance. *Id*. at 8. On the basis of this new development, Sunbelt seeks damages in the amount of $33,443.00 (representing lost rental amounts from the date the equipment was reported missing to the date of its recovery) plus $2,637.50 for repairs to the equipment; treble damages pursuant to RICO, for a total of $108,241.15; and $17,593.00 in attorney fees and costs, for a total recovery of $125,833.15. *Id*. at 12-14.

attorney's fee.") (citation and internal quotation marks omitted).[7] On balance, this factor strongly favors Corbridge, rather than Sunbelt.

4. **Good Faith of Parties.** Although Corbridge did not evince good faith in his initial threatening response to Sunbelt, he has subsequently so comported himself – making a good-faith settlement offer, responding expeditiously to notice of the entry of default and, insofar as appears, complying to the best of his ability with court rules upon receiving information from the clerk's office pertaining to *pro se* litigation. With respect to Sunbelt's good faith, Corbridge states, "I,m [sic] starting to think that the letter of Nov. 22, 2000 was an attempt to stall me into a 'default' with your honorable court." January 9 Letter. However, any belief on Corbridge's part that he need not have answered the Complaint was the product of his own erroneous assumptions, not any false or misleading representation by Sunbelt**.**

5. **Amount of Money Involved.** In its motion for assessment of damages Sunbelt seeks a total of $125,833.15, a figure that includes treble damages predicated on its RICO claim. Corbridge's assertion that a default judgment would have a very negative impact on himself and his small business is entirely credible.

6. **Timing of Motion.** Corbridge filed his letter protesting Sunbelt's request for entry of default within several days of the filing of Sunbelt's motion and even before he knew that a default had been entered. Less than a month after receiving instructive materials from the clerk's office he filed the instant Motion. Dilatoriness simply is not an issue in this case.

Stepping back from the detail of the seven factors, I am mindful of this court's admonitions that "if at all possible, actions should be decided on their merits" and that a motion to set aside the entry of default should be granted "upon a showing of reasonable justification, while resolving all doubts in

[7] Indeed, as noted above, Sunbelt makes clear in its pending motion for assessment of damages that it seeks treble damages pursuant (*continued on next page*)

favor of the party seeking relief from the entry of default." *See Snyder*, 836 F. Supp. at 29. This is not a case – as Sunbelt would portray it – in which liability simply is conceded. To the contrary, Corbridge consistently has denied any responsibility for the disappearance of the construction equipment. At the very least, his liability for the RICO claim, which subjects him to treble damages, is in serious question.[8] Corbridge promptly responded to Sunbelt's request for entry of default, and Sunbelt demonstrates no prejudice from permitting this lawsuit to proceed on the merits. Finally, although Corbridge initially adopted a belligerent attitude toward Sunbelt, its attorneys and the instant suit, he has subsequently demonstrated an ability to proceed in good faith.

IV. Conclusion

For the foregoing reasons, I recommend that the Motion be **GRANTED**.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated this 12th day of March, 2001.

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to RICO.

[8] Sunbelt identifies racketeering and interstate transport of stolen property as predicate acts for Corbridge's RICO liability. Complaint ¶ 53. Even were two predicate acts proven, analysis would not end there. Sunbelt would have the burden of establishing *inter alia* a pattern of racketerring activity. "To establish a 'pattern of racketeering activity,' the RICO plaintiff must point to at least two predicate acts enumerated in 18 U.S.C. § 1961(1). However, '[r]acketeering acts . . . do not constitute a pattern simply because they number two or more.' The plaintiff must also show that the acts are related and that they demonstrate a threat of continued criminal activity." *Gonzalez-Morales v. Hernandez-Arencibia*, 221 F.3d 45, 51 (1st Cir. 2000) (citations omitted); *see also Efron v. Embassy Suites (Puerto Rico), Inc*., 223 F.3d 12, 21 (1st Cir. 2000) ("Congress contemplated that only a party engaging in widespread fraud would be subject to such serious consequences [as are provided by RICO]. . . . The pattern requirement . . . ensure[s] that RICO's extraordinary remedy does not threaten the ordinary run of commercial transactions; that treble damage suits are not brought against isolated offenders for their harassment and settlement value. . . .") (citation and internal quotation marks omitted).

David M. Cohen
United States Magistrate Judge

STNDRD

U.S. District Court
District of Maine (Portland)

CIVIL DOCKET FOR CASE #: 00-CV-363

SUNBELT RENTALS INC v. CORBRIDGE Filed: 11/14/00
Assigned to: JUDGE D. BROCK HORNBY
Demand: $125,000 Nature of Suit: 470
Lead Docket: None Jurisdiction: Federal Question
Dkt# in other court: None

Cause: 18:1961 Racketeering (RICO) Act

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